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Supreme Court of the United States.

OCTOBER TERM, 1913.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BÉARN, COUNT AND PRINCE OF BÉARN AND CHALAIS,

Appellant,

vs.

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE *et al.*,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

APPELLANT'S BRIEF.

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Statement of the Case.

This case comes here by direct appeal from a final decree of the District Court of the United States for the District of Maryland sustaining demurrers filed by all the defendants to the complainant's bill in equity and finally dismissing the bill for want of jurisdiction (p. 17). The case is thus presented upon conceded facts.

The complainant is a French citizen suing two corporations and divers individuals, all citizens of Maryland (fols. 2, 3). He is the owner of debts of two railroad corporations, one a Wisconsin corporation and the other a New York corporation, evidenced by bonds registered in the names of his infant children (fol. 4).

These bonds "are not negotiable but are evidences that said debts were and are registered upon the books of the respective corporations" as aforesaid (*Ibid*).

By express mortgage provisions governing the ownership of the debts and to which reference is made in the several bonds "any transfer of the title to the said debts other than such transfer upon the books of the said corporations respectively in the City, County and State of New York is *invalid and void*" (fol. 5).

Since the year 1908, the bonds "*were and they still are* in a safe deposit box in the vault of the Safe Deposit and Trust Company of Baltimore" (*Ibid.*) where the appellant had placed them, "said box being rented and standing recorded on the books of the said Safe Deposit Company in the joint names of Messrs. Alexander Brown and Sons and the American Bonding Company" (*Ibid*). They were thus deposited by appellant in connection with a guardianship proceeding in the Orphans Court of Baltimore, which has since been declared illegal and void (*Ibid.*). For the purposes of such guardianship the appellant had agreed not to remove the bonds without the consent of the American Bonding Company as his surety on the guardian's bond which he had given in said void proceeding and had agreed "that said surety and said Alexander Brown and Sons should only have joint access to said bonds and the same for the sole purpose of enabling said Alexander Brown and Sons to remove interest warrants from said bonds during the said guardianship and forward the same to the City of New York as they became due" (*Ibid.*).

"In December 1909 the Court of Appeals of Maryland by a decree founded upon personal jurisdiction over all the parties to said guardianship proceeding, declared the said guardianship and certain releases given by your orator in connection therewith null and void; * * * neither said Bonding Company nor said Alexander Brown and Sons have

since said adjudication had any right of access to or other right or control whatsoever in, over or as to said safe deposit box and the contents of the same and said adjudication has established the lack of jnrisdiction over said property on the part of the courts which had so undertaken to deal therewith" (fol. 6).

(This adjudication is found in *DeBéarn* v. *Winans*, *111 Md., 434*).

Appellant "is entitled to the immediate possession of said evidences of debt * * * for the purpose of causing said debts to be transferred upon the books of the debtor corporations in the State of New York to the name of your orator or at his option of surrendering said bonds to the said corporations respectively in exchange for the issuance to your orator of other evidences of said debts to take the place of said bonds now so registered, as he would have done in the year 1908 but for the illegal guardianship proceeding already referred to" (*Ibid*).

Appellant "has been since the month of October, 1908, and still is *the true lessee* of said box, the rental of which has been paid with funds furnished by your orator and as above shown at all times owner of the contents thereof" (*Ibid.*) An agreement in writing between the appellant and the respondents Brown and Sons and American Bonding Company dated Baltimore, October 28th, 1908, is then set forth (fol. 7) showing upon its face that the connection of Brown and Sons and the Bonding Company with the box and its contents is restricted to the purposes of the guardianship proceeding held void by the Court of Appeals of Maryland in 1909.

The defendant Weiss, Sheriff of Baltimore, "has filed in the Superior Court of Baltimore, a court of law of the State of Maryland, returns to certain writs of attachment, stating that he has seized the aforesaid particular debts under such writs issued out of said court in five suits brought by divers non-residents of the State of Maryland against your orator; * * * your orator has not been served with

process in said suits; that said debts have not (been) and cannot be seized under said writs * * * (fol. 8); "Said Superior Court of Baltimore City has no personal jurisdiction over your orator and has not gained jurisdiction over the aforesaid box or its contents or over the debts owned by your orator in the State of New York" (*Ibid*). Immunity from the State court proceedings thus begun is claimed in the bill under the property clause of the Federal Constitution (*Ibid*). Upon these facts, the appellant, as his main relief in the suit, sought a decree declaring him to be "*the true lessee of said box* and entitled to secure access to the same and withdraw the contents thereof either in person or by his duly authorized representative" (fol. 9). He also prayed for an injunction restraining the Sheriff from any interference with the box and its contents, and "that pending this action he be so enjoined that this Court be not hindered in its jurisdiction over this cause" (*Ibid*). The bill concludes with a prayer for general relief.

Following a hearing upon demurrers filed by all the defeudants, the learned Court below sustained the demurrers and dismissed the bill as to all the defendants. This decision is stated to rest on two grounds: "want of jurisdiction" and "lack of indispensable parties, *i. e.*, the plaintiff in the attachment cases mentioned in the bill" (final decree, fol. 29). The opinion of the learned Judge below shows that in the last analysis, his decision rests on the ground that the appellant was not entitled to question the prior jurisdiction of the State court over the *res* in a suit brought in a federal court sitting in the same State.

Specification of Errors.

FIRST: The Court below erred in deciding that the jurisdiction of a State court is not open to inquiry in a Federal court sitting in the same State, and thereby deprived the appellant of rights under the Federal Constitution.

SECOND: The effect given by the Court below to State court proceedings which on the conceded facts are void *in rem* and *in personam* is repugnant to the Federal Constitution.

THIRD: It was error to hold, upon the admitted facts, that appellant was not entitled, as between himself and the appellees other than the Sheriff, to a decree construing the written agreement of Octo- 28th, 1908, in conjunction with the vacating of the guardianship proceeding, and declaring the appellant to be the true lessee of the safe deposit box.

FOURTH: It was error to hold that the rule set forth in Section 265 of the Federal Judiciary Act prevents the granting of relief against the Sheriff, upon the facts admitted by his demurrer.

FIFTH: It was error to hold the appellant not entitled to any relief against any of the appellees upon the facts set forth in the bill.

POINT I.

Appellant was entitled to show in the Federal court below that a State court sitting in the same State had not acquired jurisdiction of the bonds although the Sheriff had filed a return stating that they had been seized.

The facts admitted by the demurrer establish that the status of the safe deposit box and its contents has not been disturbed since the box was rented and the bonds placed in it by the appellant; that while writs of attachment have been issued out of a State court of law, and returns filed thereunder that

the bonds had been seized, the bonds have not in fact been seized; that the appellant had not been served in person with process and that the State court had not acquired jurisdiction over him or his property.

The learned judge below deemed himself precluded from inquiring into the jurisdiction of the State court, and this led him to disregard the facts admitted by the demurrer showing lack of any jurisdiction in the State court over the bonds. This was plainly error.

Cooper v. *Newell*, *173 U. S.*, *555*.

> "1. When a judgment of a state comes "under consideration in a court of the United "States sitting in the same state, the ques- "tion of jurisdiction of the state court to "render the judgment is open to inquiry in "the United States court (Syllabus).
>
> "2. In such case, evidence is admissible to "contradict the recital in the judgment that "defendant was a citizen and resident of the "state, and to show that he was not served "with process and that the attorney who "appeared for him had no authority to rep- "resent him" (*Ibid*).
>
> "This evidence (that process had not been "served as recited in the State Court judg- "ment) was objected to on the ground that "the judgment was rendered by a domestic "court of general jurisdiction, and that want "of jurisdiction cannot be established *aliunde* "the record in a collateral proceeding (at "p. 566). But the courts of the United States "are tribunals of a different sovereignty, and "exercise a distinct and independent juris- "diction from that exercised by the state "courts, and this is true in respect of the "courts of the several states as between each "other. And the courts of the United States "are bound to give to the judgments of the "state courts the same faith and credit that "the courts of one state are bound to give to "the judgments of the courts of her sister "states.
>
> "The same rule applies to each, *and the* "*question of jurisdiction is open to inquiry*

" *even when the judgment of the Court of a* " *State comes under consideration in a court* " *of the United States, sitting in the same* " *State.* Christmas *v.* Russell, 5 Wall., 290 " (18-475); Galpin *v.* Page, 18 Wall., 350 " (21-959); Pennoyer *v.* Neff, 95 U. S., 714 " (24-565); Hart *v.* Sansom, 110 U. S., 151 " (28-101); Goldey *v.* Morning News, 156 " U. S., 518 (39-517)" (at pp. 566-7).

POINT II.

Upon the conceded facts the State Court had not acquired prior jurisdiction over the bonds.

(*a*) It is conceded that the bonds " are not negotiable, and are registered upon the books of the respective corporations " (fol. 4) in the names of the appellant's infant children, subject to express provisions whereby any transfer of the bonds otherwise than upon the books of the corporations in New York is " illegal and void " (fol. 5). This special status of the bonds differentiates them from the class of securities called " negotiable bonds " or " bearer bonds " title to which passes by manual delivery, practically like money. The securities dealt with here for the purposes of transfer of the title of the property of which they are the evidences, are exactly analogous to certificates of stock. Like the latter, they serve to establish an ownership recorded in corporate books, and only transferable thereon by the owner or his duly authorized attorney. Any transfer otherwise than upon the books of the corporation is expressly agreed to be " invalid and void."

" Bonds and debentures which are not negotiable instruments are merely choses in action, not assignable at law " (Jones on Corporate Bonds and Mortgages, § 194).

It follows that the mere presence of the bonds in

Maryland did not subject the property of which they are the evidences to process of attachment in that State. Something more would be required, such as the presence of the owner in the State or a pledge of them in the hands of one holding an assignment of the bonds as collateral security or their deposit in the hands of a trustee within the jurisdiction vested with power of sale. The fact that such bonds are locked up in a safe deposit box in a State in which no one with power to sell the owner's title can be found is not of itself sufficient to give the courts of the State jurisdiction to proceed against them by attachment.

In *Bates* v. *N. O. J. & G. N. R. Co.*, *4 Abb. Pr.*, *72; 13 How. Pr.*, *516*, it was held that the mere presence of foreign registered coupon bonds in New York did not give the courts of that State jurisdiction to subject them to attachment proceedings.

Smith v. *Kennebec & P. R. Co.*, *45 Me.*, *547*.

Bowker v. *Hill*, *60 Me.*, *172*,

are to the same effect

In *Buck* v. *Beach*, *206 U. S.*, *392*, this Court has decided that the mere presence in the State of Indiana of non-negotiable notes and the mortgages securing them, kept in a safe by a local agent of the non-resident owner, the debtors on the notes being likewise non-residents, would not "make that property within the State which we think is clearly outside of it" (p. 407); that although the notes could have been the object of larceny in Indiana, they could not, by "due process of law," be condemned and sold in the State.

See also *Tweedy* v. *Bogart*, *56 Conn.*, *15*.

Ward v. *Boyce*, *152 N. Y.*, *191*.

In *Simpson* v. *Jersey City Contracting Company*, *165 N. Y.*, *193*, the highest Court of New York decided that the "reversionary interest" of a non-resident pledgeor of stock of a foreign corporation

who had delivered to the pledgee, with the stock certificate, an assignment of the shares represented by it with power to transfer them on the books of the corporation, could be attached by service of process upon the resident pledgee.

No such "reversionary interest" or its equivalent can be found in the State of Maryland in the case at bar. It surely cannot be found in the "right of access" of Brown and Sons and the American Bonding Company for the purpose of clipping coupons under an agreement which was rescinded as the result of the setting aside of the guardianship proceeding which led the appellant to grant such right of access. It is not clear how such agency could be availed of to transfer the title to the bonds. No other agency is claimed to exist in the State to achieve that purpose.

(*b*) But treating the bonds as capable of transfer by manual delivery it is manifest upon the conceded facts that they have not been subjected to such proceedings as would bring them within the jurisdiction of the State court. They have not been seized, and a return filed in the State court, describing them as seized is admittedly false; they are still where the appellant placed them, and the sheriff has had no access to them. Being the true lessee of that box in which they are, the agency granting access thereto to certain of the appellees having terminated, the appellant alone or his duly authorized attorney can lawfully obtain such access. There is thus no one in Maryland vested with lawful authority to open the box and take its contents.

Such being the situation, how could attachment proceedings lawfully subject the bonds to the process of the State of Maryland? The safe deposit company is a mere landlord; it has nothing in its custody and merely controls the right of access to the boxes and safes which it rents. The American Bonding Company and Brown and Sons admit that they are not the true lessees of the box although it was rented in

their joint names; they admit that the appellant is the true lessee; that the rent of the box has been paid with funds furnished by him, and that they have ceased to have any rights whatever of access or otherwise as to the box or its contents. Obviously they have no lawful authority to deal with the box and its contents, and any interference on their part with the same would involve them in liability as trustees *de leur tord* of the appellant. A decree granting the first prayer of the bill would relieve them of any liability in the premises.

Thus, treating the bonds as property capable of transfer by manual delivery, it is nevertheless clear that as they were not seized, the State Court did not gain jurisdiction over them.

In *Cooper* v. *Reynolds, 10 Wall, 308*, it is said:

> "Jurisdiction of the person is obtained by "the service of process, or by the voluntary "appearance of the party in the progress of "the cause.
>
> "*Jurisdiction of the res is obtained by a "seizure under process of the court, whereby "it is held to abide such order as the Court "may make concerning it*" (19 L. Ed., at p. 932).

In *Pelham* v. *Rose, 9 Wall., 103*, it appeared that the "marshal did not, in obedience to the writ of monition, attach the note therein described, nor seize the same by himself or deputy; that the note was not even within sight of the marshal, or of any of his deputies," etc.

Mr. Justice Field, writing the opinion of the Court from which the above extract is taken, said:

> "The seizure of the property as thus seen, is "made the foundation of the subsequent pro- "ceedings. It is essential to give jurisdiction "to the Court to decree a forfeiture. *Now by "the seizure of a thing is meant the taking of a "thing into possession*, the manner of which "and whether actual or constructive depend- "ing upon the nature of the thing seized. *As "apptied to subjects capable of manual deliv-*

> " *ery, the term means caption, the physical* " *taking into custody. In the case at bar a* " *visible thing capable of physical possession* " *is the subject of the libel. It is the promis* " *sory note of Pelham which constitutes the* " *res against which the proceeding is insti-* " *tuted* and not 'a credit 'debt, which the note " is supposed by the defendants' counsel to " represent " (19 L. E., 603–4).

The same case came up again to this Court under the title of *Pelham* v. *Way, 15 Wall., 196*, and on the same question this Court in an opinion delivered by Mr. Justice Strong said:

> " But the question here is whether the debt " was seized, or whether the subject of the " seizure and the consequent libel, was only an " evidence of the debt, a thing capable of actual " manipulation and delivery. That is was the " latter an inspection of the record and the deci- " sion of this court in Pelham *v.* Rose, 9 Wall., " 103, sufficiently establish. The libel was " against a promissory note, particularly de- " scribing it, and it was that, not the debt of " which it was evidence, that was claimed to " have been forfeited. The monition was " against the promissory note, and nothing " else * * *. For this reason it was held " that *to effect its seizure, it was necessary* " *for the marshal to take the note into his ac-* " *tual custody and control.* That case (Pel- " ham *v.* Rose) determined that *the arrest re-* " *turned by the marshal was not a seizure of* " *the debt and consequently the debt was not* " *confiscated* " (21 L. E., 57).

It is manifest that no lien was acquired by a "seizure" which consisted merely in the filing of a return in the State court without caption of the bonds or anything amounting to physical taking into custody. Such physical taking is precisely what is conveyed by a return that the bonds have been seized, and, as admittedly the bonds had not been seized, it follows that the State court proceedings did not have the effect of creating rights in

favor of the plaintiffs in the attachment cases which the Federal court was bound to recognize and protect. Indeed, upon the admitted facts the Federal court was bound to treat as void State court proceedings lacking the fundamental basis of jurisdiction.

Pennoyer vs. *Neff*, *95 U. S.*, *714*, *730*.

POINT III.

The Federal court having acquired prior jurisdiction by process served *in personam* on the lessor and on the nominal lessees of the box as parties defendant in an original suit to determine the status of the leasehold of the safe deposit box should protect its jurisdiction to render a decree by preventing interference with the *res*.

It is a familiar rule that the prohibition now contained in Section 265 of the Judiciary Act against interference by a Federal court with State court proceedings does not prevent a Federal court which has first acquired jurisdiction of the *res* from preventing interference therewith pending a determination of the suit; and whenever necessary to enjoin such interference. In the case at bar the Sheriff was made a party defendant and injunctive relief properly prayed for against him because by the filing of a false and void return he had certified to the seizure of bonds which he had not in fact seized; and these bonds being contained in the box, the leasehold of which is the primary subject-matter of this suit, it was necessary for the protection of the true lessee as well as for that of the lessor and nominal lessees of the box that the

determination should include an adjudication concerning the falsity of the return filed by the Sheriff concerning the contents of the box. Thus relief was applied for only against State court proceedings shown to be invalid by the admitted facts, and such relief the Federal court had the power and duty to grant as an incident to its jurisdiction over the subject-matter of the action.

That priority of jurisdiction as between a Federal and a State court confers exclusiveness of jurisdiction upon the court which first acquired dominion over the subject-matter and that the question of priority should be determined in the Federal court subject to review in the supreme tribunal of the nation has long been settled:

Freeman vs. *Howe et al.*, *24 How.*, *450-461.*

Syllabus:

(1) " In the case of conflicting authorities " under a state and federal process, on which " property has been seized, the question as to " which authority shall for the time prevail, " does not depend upon the rights of the " respective parties to the property seized, " but upon the question, which jurisdiction " had first attached by the seizure and custody " of the property under its process.

(4) " It belongs to the federal courts to " determine the question of their own jurisdic- " tion, the ultimate arbiter being the supreme " judicial tribunal of the nation " (16 L. E., 749).

Opinion by Nelson, *J.*:

" But it is claimed that the process of at- " tachment issued by a common law court " stands upon a different footing, and the " reasons assigned for the distinction are, " that in the one case the property seized is " the subject of legal inquiry in this court, " the matter to be tried and adjudicated upon, " and which, in the language of the counsel, " lies at the foundation of the jurisdiction of " the court; but that, in the other, the prop- " erty seized, namely: under the attachment,

" is not the subject-matter to be tried, like
" the property which is the subject of a libel
" *in rem*, as the process is simply, for the re-
" covery of a debt, without any lien or charge
" upon the property is a collateral one, which
" the federal court could not hear and decide
" in the action before it; and further, that the
" question of liability of the Railroad Com-
" pany was upon certain bonds, the trial and
" judgment upon which would not be affected
" by the possession or want of possession of
" the property seized by the Marshal.
" * * * The court is not aware of any
" such distinction " (16 L. E., 751).
" We regard the question as settled, at
" least as early as United States *v.* Peters,
" 5 Cranch, 115, familiarly known as The
" Olmstead case, and which is historical, that
" it belongs to the federal courts to determine
" the question of their own jurisdiction, the
" ultimate arbiter, the supreme judicial tri-
" bunal of the nation, and which has been
" recently reaffirmed, after the most careful
" and deliberate consideration, in the opinion
" of the present Chief Justice, in the case of
" The United States *v.* Booth, 21 How., 506"
(16 L. E. 752).

The principle has been reaffirmed in recent decisions of this Court:

Ricker Land, &c., Cattle Co. v. *Miller & Lux*, *218 U. S., 258.*
Helm v. *Zarecor*, *222 U. S., 32.*

Conclusion.

The appellant is deprived of his property by a decree giving effect to State court proceedings which are not supported by jurisdiction acquired either *in rem* or *in personam* according to the settled rules of jurisprudence and which, under the decisions of this Court, do not constitute " due process of law."

Respectfully submitted,

MAURICE LÉON,
Attorney for Appellant.

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 301.

LOUIS ELIE JOSEPH HENRY DE GALARD DE BRASSAC DE BEARN, COUNT AND PRINCE OF BEARN AND CHALAIS,

PLAINTIFF IN ERROR,

Against

SAFE DEPOSIT AND TRUST COMPANY OF BALTIMORE, AMERICAN BONDING COMPANY OF BALTIMORE, ALEXANDER BROWN & SONS, AND THEODORE P. WEIS, SHERIFF OF BALTIMORE CITY.

Appeal from District Court of United States for the District of Maryland.

Brief for Defendants, Safe Deposit and Trust Company of Baltimore, Alexander Brown & Sons, and American Bonding Company of Baltimore.

HISTORY OF THE DE BEARN LITIGATION.

The plaintiff had received under the distribution of his wife's estate one-third thereof in his own right and two-thirds thereof as guardian of his two infant children. The

two-thirds consisted principally of railroad bonds registered in the name of his infant children, these bonds having been deposited in a safe deposit box of the Safe Deposit and Trust Company, one of the defendants herein, under the terms of a letter of October 28th, 1908, appearing on page 4 of the Record. Thereafter the plaintiff filed a bill in the equity court of Baltimore City praying for the setting aside of this distribution. The lower Court by its decree dismissed the bill, but this decree was reversed by the decree of the Court of Appeals of Maryland, December 3rd, 1909 (111 Md. 434). At or about this latter date these bonds were attached by creditors of the plaintiff in suits instituted by them in the Superior Court of Baltimore City. On December 28th, 1909, and January 29th, 1910, these attaching creditors filed a petition asking leave to intervene in the equity case, praying that no order be passed permitting the delivery of the bonds to the plaintiff, or their removal out of the jurisdiction of the Court. On February 4th, 1910, the plaintiff united with these attaching creditors and filed a petition in the equity case, alleging that the attachment cases had been settled, and prayed that the American Bonding Company and Alexander Brown & Sons be made parties to the equity case, and that subpœnas be directed to them. Thereafter subpœnas were issued and served as prayed, and in pursuance thereof the American Bonding Company and Alexander Brown & Sons filed their answers setting up the attachment proceedings and the circumstances under which the bonds were held. On May 21, 1910, an order was passed in the equity case dismissing the last-mentioned petition. This was done at the instance of the plaintiff, who alleged that no settlement of the attachment cases had been made. The effect of this order was to remove the American Bonding Company of Baltimore and Alexander Brown & Sons as parties to the equity case. On June 4th, 1910, the plaintiff by petition filed in the equity case, prayed that a decree

should be passed in accordance with the aforesaid decree of the Court of Appeals of December 3rd, 1910, and the mandate sent down in pursuance thereof, and he attached to said petition a draft of the decree which he desired. One of the provisions of this draft was that the Clerk of the Court was to be directed to make and execute such instruments relating to these bonds, as should be requisite to effect a transfer of the registration of the bonds from the infants to bearer, and to deliver such bonds to the plaintiff or his attorney, notwithstanding the fact that the American Bonding Company and Alexander Brown & Sons were no longer parties to said equity case, and notwithstanding the fact that the attachment cases were outstanding.

It suffices to say that the decree of the lower Court passed June 6th, 1910, was not in accordance with said draft. From the decree, however, so passed, the plaintiff appealed again to the Court of Appeals. This appeal is reported in 115 Md. 139, the decision being rendered April 5th, 1911.

The Court of Appeals reversed the decree and held that when the case was remanded, the decree to be passed should provide for a cancellation of the registration of the bonds in such manner as the lower Court should deem proper, and that if it deemed it necessary, it should make the Safe Deposit and Trust Company, American Bonding Company and Alexander Brown & Sons parties to the equity case, and it should further provide that such cancellation should in no wise affect the rights of attaching creditors.

On May 9th, 1911 (see Record, page 1, this Court, October Term, 1913, No. 557), Mr. Bernard Carter, who was attorney for certain of the parties in the equity case, and the firm of Barton, Wilmer, Ambler & Stewart, who were attorneys at one time for the plaintiff, joined with the attaching creditors, in the filing of a petition in the equity case, praying for the cancellation of the registration of the bonds, and that the American Bonding Company and Alexander Brown & Sons be made parties to the equity case. In pursuance of

this petition subpœna was issued as prayed and served on the American Bonding Company and Alexander Brown & Sons (Record, page 6, No. 557). The American Bonding Company and Alexander Brown & Sons in due time appeared and answered (R. No. 557, pages 8, 11). Mr. Carter afterwards withdrew from this petition (R. No. 557, page 14); but on April 13th, 1912, he together with Ross R Winans filed their petition in the equity case, praying among other things that a subpœna be issued to American Bonding Company and Alexander Brown & Sons (R. 557, p. 18), subpœna was issued and served, and these parties in due time answered this petition (R. No. 557, pp. 22-23). The plaintiff on May 24th, 1912, also answered this petition (R. No. 557, p. 26), setting up among other things that on the 16th of April, 1912, he had filed in the United States District Court for the District of Maryland the bill of complaint in this present appeal (R. No. 557, p. 29).

On June 7th, 1912, the plaintiff by his petition (R. No. 557, p. 30) again submitted a draft for a final decree in said equity case.

On June 10th, 1912, the attaching creditors filed in said equity case certified copies of the judgments which they had obtained (Record No. 557, pages 42 to 46).

These judgments were obtained on the 28th day of May, 1912. They are judgments of condemnation against the bonds and aggregate about $60,000.

It suffices to say here that these attachment cases have been twice before the Court of Appeals of Maryalnd (115 Md. 668, 119 Md. 418), and the judgments of condemnation affirmed. They have also been twice before this Court on writ of error and the writ dismissed on motion (225 U. S. 695, Record Nos. 558-561, October Term, 1913).

On June 10th, 1912, the lower Court in the equity case passed another decree (R. No. 557, p. 48). By this decree a Trustee is appointed and the American Bonding Company

and Alexander Brown & Sons are ordered and decreed to transfer and assign to the Trustee the safe deposit box containing said bonds, and the Trustee is ordered and adjudged to execute such papers in the names of the infants necessary to make the bonds payable to bearer. An appeal was taken from this decree by the plaintiff to the Court of Appeals of Maryland. The case is reported in 119 Md. 390. Opinion was rendered January 15, 1913. The Court of Appeals for certain reasons not necessary to mention here reversed the decree, but holds that the decree in so far as it appointed a Trustee to take possession of the bonds and cancel the registration is valid. By reason of the holding of the Court of Appeals of Maryland the plaintiff sued out a writ of error to this Court. The Record in this case is the above-mentioned Record No. 557, October Term, 1913, and there was filed therein a motion to dismiss, which was granted March 9th, 1914. Two of these defendants filed a brief in said case in opposition to said motion, and they also filed a brief in opposition to dismissing the writ of error to this Court in the attachment cases.

THE BILL IN THIS CASE.

The bill was filed April 16th 1912, and on that day the writ of subpœna was served on the defendants to appear on the first Tuesday in May. Thereafter, as above pointed out, the plaintiff on May 24th, 1912, appeared in the equity case, filed his answer to the petition of Carter and Winans, and attached to said answer a copy of said bill.

The bill alleges, among other things, that the plaintiff is the owner of certain bonds of the face value of $185,000, all being registered in the name of one or the other of his infant children; that some of them are bonds of a Wisconsin Railway corporation, and some of a New York Railway cor-

poration; that under the mortgages securing said bonds they are only transferable on the books of said corporations in New York; that said bonds are in a box of the Safe Deposit and Trust Company, standing in the joint names of Alexander Brown & Sons and American Bonding Company of Baltimore; that since the decision of the Court of Appeals of Maryland in December, 1909, awarding the plaintiff ownership of said bonds, neither Alexander Brown & Sons nor the American Bonding Company have had any right of access to said box; that neither the Bonding Company nor Brown & Sons make any claim to said box or its contents antagonistic to the plaintiff; but the plaintiff is unable to secure access to said box, or to withdraw its contents, except by the aid of a Court of Equity, and that such a decree is necessary to protect the Safe Deposit & Trust Company as landlord; that the defendant, Sheriff, has filed in the Superior Court of Baltimore City returns to certain writs of attachment, stating that he has seized said bonds, and the plaintiff alleges that said attachment proceedings are void.

The bill prays for a decree determining that the plaintiff is entitled to access to said box and to withdraw its contents, and that the Sheriff be enjoined from interfering with said box and its contents. The defendants in due course appeared and demurred to the bill for the following reasons:

(1) From the plaintiff's own showing he is not entitled to relief;

(2) That the bill shows that there are other parties who are necessary parties;

(3) The bonds are in the possession and under the control of the Superior Court of Baltimore City.

The lower Court sustained the demurrer and dismissed the bill, as the plaintiff elected not to amend.

ARGUMENT.

It appears from the above statement that at the time of the filing of the bill these bonds were all subject to several attachments, issued out of the Superior Court of Baltimore City in suits instituted against the plaintiff by his creditors; that shortly after filing the bill judgments were rendered in these attachment suits, condemning these bonds, and that said judgments are now final.

There are two cardinal principles in law which apply to this case and render the bill demurrable: One, that indispensable parties to a decree (in this case the attaching creditors) must be made parties;

Foster, Fed. Pr. (4th Ed.), sections 53, 60;

the other, that where a State Court has first acquired jurisdiction, the United States Court will not act.

1 Foster, Fed. Pr. (4th Ed.), section 9.

These questions have been so fully discussed in the opinion of the lower Court (Record, page 12) that argument here is unnecessary.

Respectfully submitted,

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EDWARD DUFFY,
Solicitor for American Bonding Company of Baltimore.

CHARLES McH. HOWARD,
Solicitor for Safe Deposit & Trust Co. of Baltimore.